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IN THE

Supreme Court of the United States

October Term, ~~1948~~ 49

No. ~~887~~ 44

HEMAN MARION SWEATT,

Petitioner,

v.

THEOPHILIS SHICKEL PAINTER *et al.*,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of Texas

BRIEF ON BEHALF OF AMERICAN JEWISH COMMITTEE B'NAI B'RITH (ANTI-DEFAMATION LEAGUE) and NATIONAL CITIZENS' COUNCIL ON CIVIL RIGHTS AS *AMICI CURIAE*

MARCUS COHN,
Washington, D. C.,
JACOB GRUMET,
New York City,
Attorneys for:
American Jewish Committee,
B'nai B'rith (Anti-Defamation League),
National Citizens' Council on Civil Rights,

THEODORE LESKES,
SOL RABKIN,
JACOB SCHAFF,
Of Counsel.

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IN THE

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BRIEF ON BEHALF OF AMERICAN JEWISH COMMITTEE B'NAI B'RITH (ANTI-DEFAMATION LEAGUE) and NATIONAL CITIZENS' COUNCIL ON CIVIL RIGHTS AS *AMICI CURIAE*

Interest of the *Amici* *

This brief is filed, with the consent of both parties, on behalf of the American Jewish Committee, the Anti-Defamation League of B'nai B'rith, and the National Citizens' Council on Civil Rights.

* The Appendix contains a description of the organizations appearing as *amici curiae*.

Each of these organizations is dedicated to the preservation of democratic rights guaranteed all citizens by our Federal Constitution. Each has long since recognized that the invasion of the rights of any individual or group on the basis of race undermines the foundation of rights guaranteed to all groups in our democracy.

The present case causes us deep concern because the pattern of discrimination in segregated educational facilities has deprived millions of Americans of equality of opportunity and has perpetuated an abhorrent caste system. In the light of sociological and psychological insights gained from experience with segregated school systems it is clear that compulsory segregation results in physical, social, intellectual and economic inequality for the Negro and any other segregated group. These inequalities give rise to and strengthen the effect of inequalities in other areas of human activity, for such inequalities compound each other.

Beyond this, we are concerned with the fact that segregation has become an effective threat to the very foundation of our democratic way of life. If a State can require segregation in education for Negroes, it can also require it for Chinese, see *Gong Lum* v. *Rice*, 275 U. S. 78, for Mexicans, see *Westminster School District* v. *Mendez*, 161 F. (2d) 774, or for any arbitrarily selected group. Segregation maintains the racist doctrine that undesirable social traits and inferior mental capacities inhere not in the individual, but in the group. This concept must be excised from the fabric of our society. Certainly a first step is to remove it from our law.

It should be stated finally that we are fully aware that implicit in the defense by some of segregation and of the "separate but equal" doctrine is the fear that a destruction of the barriers of segregation will give rise to in-

creased racial tensions. We believe that the ugly prejudices which create such tensions batten on segregation.

A decision by this Court eliminating racial segregation in education will strengthen the democratic relationships among the various groups in our population. This issue must be faced honestly and boldly.

Opinions Below

The judgment of the Supreme Court of the State of Texas refusing the application for writ of error to the Court of Civil Appeals for the Third District, dated September 29, 1948, without opinion, appears on page 466 of the record. The order, dated October 27, 1948, overruling the motion for a rehearing, without opinion, appears on page 471 of the record. The opinion of the Court of Civil Appeals, dated February 25, 1948, appears at page 445 of the record, and that of the District Court of Travis County, dated June 17, 1947, is reported at page 438.

Jurisdiction

Jurisdiction is invoked under Title 28, United States Code, section 1257 (3).

Statement of Facts

The petitioner in this case, Heman Marion Sweatt, sought admission to the School of Law of the University of Texas. He concededly met all of the academic qualifications, but the authorities of the University denied him enrollment because he is a Negro.

In the State of Texas in accordance with statutory and constitutional provisions the maintenance of separate schools for whites and Negroes is compulsory. The University of Texas Law School which Sweatt sought to enter is maintained for white students only.

On May 16, 1946, Sweatt brought an action in mandamus in the District Court of Travis County, Texas, to compel the members of the Board of Regents of the University of Texas, and others, to admit him as a student. That court, after a hearing, entered an order finding that Sweatt was denied the equal protection of the laws since no provision had been made by the State of Texas for his legal training.

The District Court did not, however, grant the writ of mandamus but rather adjourned further consideration of the action until December 17, 1946, giving the respondents six months time within which to produce a course of legal instruction substantially equivalent to that provided for white students at the University of Texas.

At the second hearing on the application for the writ, which took place December 17, 1946, the State of Texas attempted to show the availability of a law school for Sweatt by presenting to the court a copy of a resolution adopted November 27, 1946, by the Board of Directors of Texas A. & M. College to the effect that if Negro applicants for law school training were to present proper evidence of the required academic qualifications they would be admitted to a law school for Negroes to be established in Houston, Texas for the semester beginning February 1947. There was no evidence produced, however, to show that a law school for Negroes had actually been established.

On the basis of this representation at the December 17th hearing the court entered a final order denying the petition.

This judgment was set aside without opinion by the Court of Civil Appeals, and the cause was remanded for further proceedings without prejudice to the right of any party.

Meanwhile, the State authorities established a separate Negro law school in premises rented in an office building in Austin, Texas, for a period to begin sometime in the latter part of February or early March 1947, and to end on August 31, 1947. A description of the facilities provided for this law school is given in Point II of the argument, *infra*.

In May 1947, by amendment and supplementation of the original pleadings, the petitioner and respondents joined issue on the question whether the establishment of this separate Negro law school during the period of proceedings on the appeal was sufficient compliance with the equal protection clause of the Fourteenth Amendment and, therefore, whether the refusal to admit Sweatt to the School of Law of the University of Texas was arbitrary and in violation of the Fourteenth Amendment.

The trial on this issue was held before the district court sitting without a jury. Judgment was rendered for respondents. This was affirmed on appeal to the Civil Court of Appeals. Writ of error was refused by the Supreme Court of the State of Texas.

Summary of Argument

The following arguments will be urged in this brief:

I. This Court has never before decided on the Constitutional validity of racial segregation in public education. The Court has, in *dictum*, signified its approval of the "separate but equal" doctrine as applied to education, but has never ruled specifically whether racial segregation in education is within the "equal protection of the laws" provision of the Fourteenth Amendment.

II. Racial segregation in public education results in inequality and is a form of discrimination.

This Court has recently stricken down many forms of discrimination in such fields as housing, ownership of land, eligibility for employment and in jury duty. The Court has particularly opposed discriminatory practices "rooted deeply in racial, economic and social antagonisms."

The "separate but equal" doctrine urged here stresses that separation is not discrimination where physically equal facilities are provided, but the "separate but equal" doctrine is a fiction which must be pierced. Segregation results in social, intellectual, physical and economic inequality and hence is discriminatory.

Social inequality is an inevitable concomitant of segregation. The premise of *Plessy* v. *Ferguson* that segregation does "not necessarily imply the inferiority of either race to the other" is invalid.

Intellectual inequality results where students in one racial group are separated from others so that they cannot share in intellectual discussion in law classes, in law review work, in moot courts and the like.

The physical equality supposedly guaranteed by the "separate but equal" doctrine does not exist in fact. The physical facilities afforded white students in Texas are far superior to those provided for Negroes and the University of Texas Law School for white students is incomparably superior to the law school provided for Negroes. Nor can physical equality in dual school systems be achieved in the future.

Economic inequality also inheres in racial segregation in education. The legal profession is peculiarly one in which social relationships lead to economic opportunities which shape a lawyer's career. Negroes denied the fullest possible social relationships are deprived of economic rights.

In the light of this, the Court is asked to grant the petition for certiorari and decide whether racial segregation in public education is a violation of the "equal protection of the laws" under the Fourteenth Amendment.

III. It is of great importance to this nation that the Court decide this issue now.

Racial segregation in our country is a threat to our leadership in international affairs. We have subscribed to international agreements and resolutions which are contradicted by our practices. A continuation of segregation gives the lie to our democratic protestations at a time when our leadership in world affairs is challenged.

Finally, unless racial segregation in education is declared unconstitutional now, we may expect a further crystallization of patterns of discrimination, inasmuch as governors of eleven Southern States are planning to implement a regional compact which will provide higher education for Negroes on a segregated basis.

POINT I

The validity under the equal protection clause of the Fourteenth Amendment of racial segregation in public educational facilities has never before been decided by this Court.

The issue before this Court is whether it will grant certiorari in order to determine the validity of constitutional and statutory provisions of the State of Texas which require racial segregation in public educational facilities. Despite the transcendent importance of the question, this Court has never ruled directly on the constitutionality of segregation in public education. The Court has decided on similar problems, such as the validity of racial segregation in transportation and in housing. It has also approved, but always in *dictum*, of racial segregation in education, and has decided matters relating to educational segregation where the validity of segregation was merely assumed and not in question. But this Court has never before ruled flatly and specifically on the validity under the Fourteenth Amendment of segregation in education.

Following the adoption in 1868 of the Fourteenth Amendment, the earliest case in which some reference was made by this Court to racial segregation in education was *Hall* v. *DeCuir*, 95 U. S. 485 (1877), which involved the validity of a State statute prohibiting segregation by race in public carriers. The statute was declared unconstitutional as an improper regulation of foreign and interstate commerce. In a concurring opinion, Mr. Justice Clifford reviewed with approval the conclusions of a number of State cases which had upheld the reasonableness of racial segregation in education and stated in

dictum that segregation in the public schools did not violate the Fourteenth Amendment if physically equal school facilities for Negroes were preserved.

In 1896 this Court decided *Plessy* v. *Ferguson*, 163 U. S. 537 (1896), which sustained the constitutionality of a Louisiana statute which required public carriers to furnish separate but equal coach accommodations for whites and Negroes. The Court as before, in *dictum*, cited with approval several ancient State cases which had held that a State could require the segregation of racial groups in its educational system provided that facilities for all groups were physically equal.

The constitutionality of "separate but equal" facilities in *education* was concededly not before the Court in either the *Hall* or the *Plessy* cases. Yet, although there was no basis for a discussion of equal facilities in education, and in spite of the fact that the statements of the Court were *dicta*, the *Plessy* case was subsequently employed by State and lower federal courts[1] to proclaim the legality of segregation in educational institutions.

Three years later, this Court decided *Cumming* v. *County Board of Education*, 175 U. S. 528 (1899). There an injunction was sought to restrain the board of education from maintaining a high school for white children where none was maintained for Negro children. The State court had upheld the board of education, saying that its allocation of funds did not involve bad faith or abuse of discretion. In upholding the decision of the State court, Mr. Justice Harlan stated expressly that racial segregation in the school system of the State was not in issue.

The next case before this Court which involved compulsory educational segregation was *Berea College* v. *Kentucky*, 211 U. S. 45 (1908), wherein the validity of a State

[1] See cases cited, 46 Mich. L. Rev. 639, 643 (1948).

statute which prohibited domestic corporations from teaching white and Negro pupils in the same private educational institution was attacked. While the scope of the statute was broad enough to include individuals as well as corporations, this Court said (at 54),

> • • • it is unnecessary for us to consider anything more than the question of its validity as applied to corporations. • • • Even if it were conceded that its assertion of power over individuals cannot be sustained, still it must be upheld so far as it restrains corporations.

This Court upheld the reasoning of the State court that the statute could be upheld as coming within the power of a State over one of its own corporate creatures. The statute was considered not to have embodied a deprivation of property rights. The rights of individuals were not considered.

Not until 1927 did racial segregation in educational institutions again become the subject of controversy before this Court. In *Gong Lum* v. *Rice*, 275 U. S. 78 (1927) a Chinese contested the right of the State of Mississippi to exclude her from the high school for whites, and to assign her to the colored school under the State's segregated school system. The State contended that under its constitutional provision requiring that separate schools be maintained for children of the white and colored races, the plaintiff could not insist on being classed with the whites and that the legislature was not compelled to provide separate schools for each of the colored races.

The issue of segregation was not presented in this case. The plaintiff accepted the system of segregation in the public schools of the State but contested her classification within that system.

Nor was the validity of segregation before the Court in the case of *Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337 (1938). There the petitioner was refused admission to the University of Missouri Law School, a State supported institution, solely because he was a Negro. He brought mandamus to compel the University to admit him. The State, having no law school for Negroes, sought to fulfill its obligation to provide equal educational facilities by paying the petitioner's tuition for a legal education in another State. This the Court held did not satisfy the Constitutional requirement. It said that the petitioner was entitled to be admitted to the University of Missouri Law School in the absence of other and proper provision for his legal training within the State of Missouri.

Again, the issue was not segregation but whether an otherwise qualified Negro applicant for law training could be excluded from the only State supported law school. This Court assumed that the validity of equal facilities in racially separate schools was settled by earlier decisions and cited the *Plessy* case, *McCabe* v. *Atchison, T. & S. F. R. Co.*, 235 U. S. 151 (1914), both of which involved segregation only in public carriers, and the *Gong Lum* case. But the validity of segregation was not decided.

The most recent consideration of this problem was in 1948 in the University of Oklahoma Law School case, *Sipuel* v. *Board of Regents of the University of Oklahoma*, 332 U. S. 631 (1948). This Court, in a *per curiam* decision, said that the State must provide law school facilities for the Negro petitioner "in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group" (at 633). The facts in the *Sipuel* case were similar to those in the *Gaines* case, in that no law school facilities were afforded Negroes by the State of Oklahoma.

Segregation was not at issue in the *Sipuel* case. This Court stated in *Fisher* v. *Hurst*, 333 U. S. 147, 150 (1948), that:

> The petition for certiorari in *Sipuel* v. *University of Oklahoma* did not present the issue whether a state might not satisfy the equal-protection clause of the Fourteenth Amendment by establishing a separate law school for Negroes. On submission, we were clear it was not an issue here.

In no case previously before this Court in which racial separation in education has been the subject of comment in an opinion has there been a record presented upon which the Court felt compelled to take cognizance of the issue of segregation *per se* in State supported educational institutions.

The record in this case presents the issue squarely:

Does segregation in State supported educational institutions meet the requirements of the "equal protection" clause of the Fourteenth Amendment?

POINT II

Inequality is an inevitable concomitant of segregation of racial groups in public educational facilities and as such violates the "equal protection of the laws" provision of the Fourteenth Amendment.

This Court is now being asked to decide whether it will penetrate the fiction of the "separate but equal" doctrine and examine into the true nature of equality. For what is being pressed upon this Court and upon our constitutional democracy by the State of Texas is a spurious concept which insists that equality can exist even though racial groups are kept rigidly compartmentalized in separate institutions of learning, denied the social and intellectual relationships which are the true well-spring of a democratic education.

It seems ironic that so late in the history of our American democracy we are still considering this question. The great Fourteenth Amendment, on which we rely, was meant to guarantee rights to the Negro which would make these deliberations unnecessary. But the Fourteenth Amendment, which was meant to destroy the "established usages, customs, and traditions of the people" which survived slavery, was used to preserve and fortify them. *Plessy* v. *Ferguson*, 163 U. S. 537, 550, 551 (1896). Instead of the equality guaranteed the Negro, there came forth from the *Plessy* case inequality in the form of separation of racial groups.

Today no one can deny that the Fourteenth Amendment prohibits discrimination because of race. This Court has in recent times attacked again and again State action which has discriminated against groups simply on the basis of their racial origin. This Court has, for

instance, declared that State courts cannot constitutionally enforce racial restrictive covenants, *Shelley v. Kraemer*, 334 U. S. 1 (1948); it has struck down as unconstitutional a racially discriminatory presumption in the California Alien Land Law, thus rendering the law ineffective and giving rise to State court decisions which have gone even further, *Oyama* v. *California*, 332 U. S. 633 (1948); it has forbidden California to use racial ineligibility for citizenship as a means for preventing Japanese from earning their living as commercial fishermen, *Takahashi* v. *Fish and Game Commission*, 334 U. S. 410 (1948); it has repeatedly refused to allow the exclusion of Negroes from grand and petit juries on the basis that to do so would be a denial of the equal protection of the laws, *Patton* v. *Mississippi*, 332 U. S. 463 (1947).

The opposition of this Court has been enhanced where the discrimination, as in this case, has been "rooted deeply in racial, economic and social antagonisms," *Oyama* v. *California*, 332 U. S. 633, 662 (1948) and this Court has firmly stated, "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi* v. *United States*, 320 U. S. 81, 100 (1943).

As Mr. Justice Murphy said in his concurring opinion in the *Oyama* case,

> The Constitution of the United States, as I read it, embodies the highest political ideals of which man is capable. It insists that our government, whether state or federal, shall respect and observe the dignity of each individual, whatever may be the name of his race, the color of his skin or the nature of his beliefs. It thus renders irrational, as a justification for discrimination, those factors which reflect racial animosity. (at 663)

In most of the cases cited, discrimination by the State was acknowledged and justification attempted. But here, "discrimination" is not acknowledged. The "separate but equal" doctrine relied on is pernicious because it is far more subtle. Segregation is not discrimination, it says, where equal facilities are provided for the segregated groups. The premise of *Plessy* is that compulsory segregation does "not necessarily imply the inferiority of either race to the other."

But can such sophistry sanctify the practices of segregation? Do they afford a segregated race "equal protection of the laws" under the Fourteenth Amendment in the face of the many injunctions of this Court that State created and enforced racial distinctions are odious and unconstitutional?

It is our contention that segregation *is* discrimination. The history of the Fourteenth Amendment reveals that its framers believed segregation to be discrimination. Our social scientists have conclusively established that segregation is discrimination. Unless we are merely paying lip service to the "highest political ideals of which man is capable" we must recognize that segregation does not "respect and observe the dignity of each individual, whatever may be the name of his race, the color of his skin" and thus should be forbidden.

The web of discrimination is indeed a tangled one. Economic discrimination cannot be dissociated from political discrimination. Intellectual discrimination cannot be pried loose from social discrimination. All have their effect on the emotional development of the individual, as well as on his physical and material opportunities.

The "separate but equal" doctrine, especially as applied to education, is an illusion because physical equality (in the form of buildings, libraries, number of teachers and

students, and the like) is actually non-existent. More important, it can never exist side by side with segregation in the face of social and economic realities.

Even should it be true that physical equality is possible, segregation is discrimination nevertheless for, in spite of the false premise of the *Plessy* case, segregation does imply social inferiority with all of the resultant evil effects. In addition, segregation works a severe disadvantage, particularly to Negroes, since they are deprived of the fullness of intellectual and social relationship which is necessary for full equality in education.

A. *Social Inequality*: Mr. Justice Frankfurter in his recent concurring opinion in *McCollum* v. *Board of Education*, 333 U. S. 203, 216 (1948), has pointed out that the State supported public school is "designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people * * *" This was also stressed in *Mendez* v. *Westminster School Dist.*, 64 F. Supp. 544, 549 (S. D. Cal. 1946) where it was declared that: "A paramount requisite in the American system of public education is social equality. It must be open to all children by unified school association regardless of lineage."[2] This federal district court decision, affirmed by the Ninth Circuit Court of Appeals on other grounds, 161 F. (2d) 774 (1947), is a happy portent of a growing realization that social inferiority is implicit in a dual school system, even were physically equal facilities provided for each group. Where there are separate schools for whites and Negroes, as is the case here, it is obvious that the Negro school is socially inferior. If the opposite

[2] This Court is recommended to Note, Segregation in Public Schools—A Violation of "Equal Protection of the Laws," 56 YALE L. J. 1059 (1947) for a discussion of the *Westminster* case and a skillful analysis of the problem of segregation in education.

point of view were not enshrined in the glosses on *Plessy v. Ferguson*, this Court might even take judicial notice of it. Our social science literature impressively documents that fact.[3] The "equal protection of the laws" provision of the Fourteenth Amendment certainly does not preclude social equality. Rather, it guarantees it.

B. *Intellectual Inequality*: Were we to concede *arguendo* that the "separate but equal" doctrine is applicable to railroad transportation, as was held in the *Plessy* case, we would still maintain that the *Plessy* doctrine is inapplicable to education. While a Negro travelling on a train can arrive at his destination at the same time as his white fellow passenger (though he might not have had as comfortable a seat), a Negro segregated in a Negro school cannot travel as far or as fast educationally as his white fellow students, especially in legal education.

Essential to the educational process is the interplay of contributions from all persons and all groups. Full equality in education is not attainable unless all students, regardless of race, have the fullest opportunity to associate intellectually with each other, to express and receive the divergent points of view which arise from their differing social backgrounds.

Negroes especially need this intellectual interplay because in most instances they have been subjected to depressed educational standards. The development of adequate educational facilities for Negroes is greatly handicapped by their isolation from the white community.

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[3] See, for instance, DAVIS AND DOLLARD, CHILDREN OF BONDAGE (1940); DOLLARD, CASTE AND CLASS IN A SOUTHERN TOWN (1937); GALLAGHER, AMERICAN CASTE AND THE NEGRO COLLEGE (1938); BOND, EDUCATION OF THE NEGRO IN THE AMERICAN SOCIAL ORDER (1934).

This is not to mention the deprivation to the white student of intellectual association with the Negro student. Nor are these mutual deprivations an indication of equality. As this Court has but lately observed in *Shelley* v. *Kraemer*, 334 U. S. 1, 22 (1948), "Equal protection of the laws is not achieved through indiscriminate imposition of inequalities."

Education for the legal profession requires the highest of standards. The study of law traverses many fields of human knowledge. Yet the Negro relegated to a jim-crow law school finds that there is an insufficient number of students to furnish the broad cross-section of intellectual interests and proficiencies which are essential ingredients of successful law school training.

Law school classes are most stimulating where they afford ample group discussion, as every member of this Court knows. It is a hopeless task to attempt to study law alone, as the petitioner is being compelled to do. Even were there a large enrollment at the Negro law school, the facilities for discussion among students would be limited and the Negro student deprived of needed intellectual challenges from white fellow students often better educated than he.

In addition to this, the segregated Negro is deprived of the opportunity of participating with white students in their law review, in moot courts and mock trials, in such practice as is afforded by legal aid clinics and public defender societies and in all of the activities which make up a rounded legal education outside of the classroom.

C. *Physical Inequality*: Wherever there is racial segregation in education the physical facilities afforded Negroes are substantially inferior to those enjoyed by whites.

The President's Commission on Higher Education has found that:

> * * * the separate and equal principle has nowhere been fully honored. Educational facilities for Negroes in segregated areas are inferior to those provided for whites. Whether one considers enrollment, over-all costs per student, teachers' salaries, transportation facilities, availability of secondary schools, or opportunities for undergraduate and graduate study, the consequences of segregation are always the same, and always adverse to the Negro citizen.[4]

Separate facilities have not been equal, are not equal, and can never be equal.

As matters stand today, the dual educational system supposedly sanctioned by the "separate but equal" doctrine often represents a saving to those communities which segregate because less funds are expended on Negro schools. The "separate but equal" concept is impossible of achievement in most communities because the maintenance of a hypothetically equal dual school system would require heavy tax increases well beyond the financial capacities of practically every community.

In 1939-40 the average expense in nine southern States for white students was almost 212% greater than the average expense for Negro students. This pattern is substantially the same in all States which segregate.[5]

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[4] HIGHER EDUCATION FOR AMERICAN DEMOCRACY: Vol. II, Equalizing and Expanding Individual Opportunity 31 (1947).

[5] BLOSE AND CALIVER, STATISTICS OF THE EDUCATION OF NEGROES: A DECADE OF PROGRESS, 6, Table 8 (1944); BLOSE AND ALVES, STATISTICS OF STATE SCHOOL SYSTEMS, 1939-40 and 1941-42, U. S. Office of Ed.; Biennial Survey of Education in the United States 37, Table XXI (1944); Worth, L., *The Price of Prejudice*, SURVEY GRAPHIC, Jan. 1947, 19-21.

Expert testimony in the record shows that the State of Texas regularly spends substantially less for Negro than for white education. The total assets of white institutions of higher learning amount to $28.66 for each white person in the State, but the assets of Negro schools amount to only $6.40 per Negro. The whites have almost four and a half times as much in total educational institutional assets per capita of the population as do the Negroes (R. 244).

In 1943-44, a typical year, Texas appropriated approximately $11,000,000. in State, county and district funds for higher education. Of this amount, about $10,800,000. went to white institutions, or $1.98 per capita of white population in the State. The balance went to Negro institutions, or the equivalent of 23¢ per capita of Negro population in the State. On this basis, white institutions of higher learning received eight times as much as Negro institutions (R. 246).

On any basis of calculation, whether per capita or per student, there is a glaring disparity between the provision of State funds for institutions of higher learning for whites as compared to that for Negroes. As a consequence of such differences, the Negro has been educationally disadvantaged over the years in Texas.

This is as true of legal education for Negroes in the State of Texas as it is in other fields of higher learning. Testimony in the trial court showed that the State of Texas provided a law school for the petitioner by leasing a suite of three rooms and toilet facilities in an office building for a period beginning March 1, 1947, and ending August 31st of that same year (R. 29, 41). These quarters were in the semi basement of the building (R. 88). One room was to be a reading and office room and the other two were intended as classrooms. There was no

private office or faculty room for any instructor, for any administrative personnel, or for a dean (R. 47). Nor was there space for a library consistent with the needs of a law school. Some 200 text books were available on the premises to serve as a library (R. 21). There was no librarian (R. 96). It was a self-service library.

The faculty consisted of three instructors assigned part-time from the University of Texas Law School (R. 92-93). Admittedly, the school established for the petitioner did not meet the requirements set by the Association of American Law Schools for accreditation (R. 92).

The State of Texas contends that this racially segregated law school affords facilities equal to those enjoyed by white students at the University of Texas Law School. But it is quite obvious that the Negro law school cannot possibly afford even a minimal legal education. To claim that it is "equal" to the University of Texas Law School is sheer hypocrisy.

It might be contended that while educational facilities have been and are, in fact, unequal, equality is nevertheless theoretically possible. But educational plants, like other physical facilities, deteriorate at varying rates. To maintain physical equality in a segregated educational system, it would be necessary to continually balance the facilities of one system against the other and to take steps to eliminate inequalities which necessarily develop from time to time. This is administratively impossible. Physical equality can be achieved only when the walls separating the two systems are destroyed and students, regardless of race or color, are permitted to use all available educational facilities.

D. *Economic Inequality*: The educationally segregated Negro is also subject to economic discrimination.

Dr. Robert Redfield, an expert on education, testified that occupational inequalities result from segregation (R. 194-200). The graduate of a Negro law school lacks the prestige which comes from graduation from an accredited and highly regarded law school. This prestige carries through in later professional life, and has a pecuniary value. In addition, the denial of free social relationships is a serious economic as well as social deprivation. The legal profession is one in which social contacts are all-important and the law school is an institution in which are formed friendships and relationships which shape the course of men's careers. Economic opportunities spring from social relationships and the practice of law itself is often eased because of friendships formed in law school. The Negro student, denied these relationships, will probably end up as a second-class lawyer as well as a second-class citizen.

We submit that the *Plessy* case, upon which the legal structure of segregation is built, can itself be considered authority for the view that segregation is a denial of "equal protection of the laws" if we conclude that its basic premise (that compulsory segregation does "not necessarily imply the inferiority of either race to the other") is invalid in the light of our present sociological and psychological insights. For the *Plessy* case itself recognized that the "exercise of the police power must be reasonable and extend only to such laws as are enacted in good faith for the promotion of the public good and not for the annoyance or oppression of a particular class" (at 550).

This Court is met with a tremendous challenge. The challenge is presented in the form of a doctrine which has for over fifty years made it possible for us to pay lip-

service to constitutional guarantees while at the same time flagrantly denying them.

The "separate but equal" doctrine has persevered despite common recognition that it is "one of the outstanding myths of American history."[6]

This Court is asked to grant a petition for writ of certiorari in order that it may decide this momentous question which has national as well as international implications.

The "separate but equal" doctrine traduces the concepts of equality which are protected by the Fourteenth Amendment. The results of this doctrine have been physical, social, intellectual and economic inequality. It must be struck down.

POINT III

A decision on the issue of racial segregation in public educational facilities presented for review by this Court is of paramount significance to the welfare of the Nation.

The welfare of the nation requires that the Court grant this petition for a writ of certiorari, and review the question whether racial segregation in public educational institutions is consonant with the constitutional principle which provides for equal protection of the laws.

[6] To Secure These Rights: The Report of the President's Committee on Civil Rights 81 (1947).

A. Racial segregation in educational institutions causes a tremendous waste of our human resources.

The cost of segregation to the Negro race, to the South, and to the entire country has become increasingly and glaringly evident.

Segregation has seriously depressed the level of education for a large part of our population. Our economy suffers substantially because of educational segregation. We have lost, and are continually losing, an important potential of manpower for industry and science. We lose also sources of leadership in government, in the professions and in other important areas.

In the most recent decennial census, that of 1940, an attempt was made for the first time to obtain information about the level of schooling of the American population. The census showed a surprising amount of illiteracy.

In the seventeen States of the South and in the District of Columbia, where separate schools for whites and Negroes are maintained, 2.8% of the native white and 11.7% of the Negro population twenty-five years of age and older had not attended school for even one year. Thirty-seven per cent of the Negroes of the South were classed as functional illiterates. This is in contrast to eleven and one-half per cent of whites.[7]

Evidence indicates an alarming deprivation of professional services in the State of Texas. The failure to provide equal educational facilities because of segregation is in large measure responsible for this. Testimony at the trial of this case drawn from 1940 U. S. Bureau of Census figures revealed that in Texas there were 6,076 white doctors, or a ratio of one to every 903 of white population, but

[7] Thompson, *The Availability of Education in the Negro Separate School*, 16 J. OF NEGRO ED. 263-268 (1947).

only 164 Negro doctors, of one Negro doctor for every 5,637 Negroes (R. 253). There were 1901 white dentists in the State, but only 81 Negro dentists. The ratio of white dentists to white population was one to every 2,886, but there was an average of only one Negro dentist for every 11,412 Negroes (R. 253). The disparity in the field of engineering was shown to be even greater. There were 8,961 white engineers, but only 6 Negro engineers in Texas (R. 254). In the legal profession, with which this case is concerned, there were but 23 Negro lawyers in the entire State as against 7,701 white lawyers. The ratio of white lawyers to white population was one to 712. The ratio among Negros was one to 41,191 (R. 254).

What is true of Texas is true in every area where racially segregated school systems are maintained.[8]

The evil effects of segregation upon the national welfare have been summed up by the President's Commission on Higher Education:

> Denial of educational opportunity restricts the preparation of the individual for effective living. It is a limiting factor also in our national welfare. Never has our country been faced with so many and so significant problems which require the highest quality of leadership. The importance of a larger supply of intellectual eminence has been demonstrated abundantly in the physical and biological sciences. Equally well-educated leadership is necessary in our economic, social, and political life. Issues related to conservation and development of natural resources, to labor-management relations, to trade and commerce, must all be resolved in terms of the public interest.[9]

[8] *See* Thompson, *Some Critical Aspects of the Problems of the Higher and Professional Education for Negroes*, 14 J. OF NEGRO ED. 509, 511 ff. (1945).

[9] REPORT OF THE PRESIDENT'S COMMISSION ON HIGHER EDUCATION: Vol. II, HIGHER EDUCATION FOR AMERICAN DEMOCRACY, 8.

B. Racial segregation in educational institutions is a threat to our leadership in international affairs.

The continued preeminence of the United States in world leadership depends, in large measure, upon the moral and material resources at our command.

We have undertaken by international agreements obligations to insure democratic treatment of all groups within our midst.[10] We have subscribed to the Universal Declaration of Human Rights of the United Nations which provides, in Article 26, that "[t]echnical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit." The Article provides further that:

> Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups. * * *

Moreover, we are now engaged in an ideological world conflict in which the practices of our democracy are the subject of close scrutiny abroad. We cannot afford to rest upon democratic pretensions unrelated to reality. It is no answer to the colored peoples of the world, whose favor and assistance we solicit, that we assure equality of treatment to all races by way of the expedient "separate but equal" doctrine. The evidence is overwhelming that "separate" has never been and can never be "equal" in any meaningful sense of the word.

[10] United Nations Charter, Article 2, par. 2; 55, 56. Declaration on Reciprocal Assistance and American Solidarity, commonly known as the Act of Chapultepec, March 3, 1945. Universal Declaration of Human Rights, approved by the United Nations General Assembly, Dec. 10, 1948, Articles 2, 7, 26.

As to material resources, in addition to those already discussed, we lose the services of personnel in every field of endeavor. Even on the level of fighting manpower we are deprived, by educational deficiencies, from the full use of our potential.

Our experience during World Wars I and II proved that the educational inequities created by the policy of segregation not only deprive the individual Negro citizen of nationally needed occupational skills, and the Negro community of the leadership and professional services it so urgently needs, but also the nation of large numbers of men who would otherwise be available for the armed services.

The Selective Service records of World War II show that in the critical period of the war, when the need for manpower was urgent, over one-third of the rejections of Negroes for military service was for educational deficiencies, while only one-twelfth of the whites rejected failed to meet the minimum educational standards.[11]

General Hershey, who was the Selective Service Administrator during World War II, stated that the very much higher rate of illiteracy for Negroes as compared to whites exists "not because Negroes resist education or for any other reason than that *educational opportunities just are not available to them.*"[12] (Italics added.)

[11] The Black and White of Rejections for Military Service. American Teachers Ass'n. Montgomery, Ala. (1944) 5.

[12] Selective Service in Peacetime. First Report of the Director of Selective Service. 1940-41 (Washington, 1942) 259.

C. Unless racial segregation in educational institutions is declared constitutionally invalid now, we can expect a further crystallization of patterns of discrimination.

There is an additional reason which should impel the Court to decide the issue presented by this case as soon as possible.

At a Conference of Southern Governors held at Tallahassee, Florida, in February 1948, the States of Alabama, Arkansas, South Carolina, Florida, Georgia, Maryland, Mississippi, Tennessee and Texas, proposed the establishment of regional universities, in an attempt to meet the previous mandate of this Court that Negroes be offered educational facilities equal to those afforded whites in the same States. It was agreed that there would be established a geographical district embracing fifteen Southern States with cooperatively owned and operated regional schools to provide higher education for Negroes on a segregated basis.

The Southern governors requested Congressional approval of this agreement.[13] This regional compact was put aside for the time being when the Senate by a vote of 38 to 37 approved a motion to send the resolution back to committee for further study.

In the middle of December 1948, the governors of eleven Southern States, and Southern educators, met in conference at Savannah, Georgia, to implement the regional school plan even though it had not been favorably acted upon by the Senate.

On December 13, 1948, it was announced that the Regional Council for Education, meeting in conjunction with the Southern Conference of Governors, had approved

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[13] Senate Joint Resolution 191, and House Resolution 334, 80th Cong., 2nd Sess.

plans and allocated funds to begin regional cooperation in graduate and professional education in the South. The program called for the expenditure of a considerable sum of money for the years 1949-51.

Considerable expenditure of effort and money is planned for the regional school project in the next two years.[14] Since the implementation of the regional school plan would have the effect of establishing the principle of segregation more firmly than ever in the social order of the South, it is, therefore, incumbent upon this Court to decide now whether racial segregation in education is violative of the equal protection clause of the Fourteenth Amendment.

CONCLUSION

For the reasons urged herein we respectfully request that the petition for writ of certiorari to review the judgment of the Court below be granted.

Respectfully submitted,

MARCUS COHN,
Washington, D. C.,

JACOB GRUMET,
New York City,

Attorneys for
American Jewish Committee,
B'nai B'rith (Anti-Defamation League),
National Citizens' Council on Civil Rights.

THEODORE LESKES,
SOL RABKIN,
JACOB SCHAUM,

of Counsel.

Dated New York, N. Y., May 24, 1949.

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[14] 17 J. OF NEGRO ED. 101-105 (1948).

APPENDIX

American Jewish Committee

The American Jewish Committee is a corporation created by an Act of the Legislature of the State of New York in 1906. Its charter states:

> The object of this corporation shall be to prevent the infraction of the civil and religious rights of Jews, in any part of the world; to render all lawful assistance and to take appropriate remedial action in the event of threatened or actual invasion or restriction of such rights, or of unfavorable discrimination with respect thereto . . .

During the forty-three years of our existence it has been one of the fundamental tenets of our organization that the welfare and security of Jews in America depend upon the preservation of constitutional guarantees. An invasion of the civil rights of any group is a threat to the safety of all groups.

For this reason we have on many occasions fought in defense of civil liberties even though Jewish interests did not appear to be specifically involved. The present case, involving segregation in state-supported educational institutions, is one with which we are deeply concerned because such discrimination deprives millions of persons of rights that are freely enjoyed by others and adversely affects the entire democratic structure of our society. A question of transcendent public importance is thus presented to this Court.

B'nai B'rith (Anti-Defamation League)

B'nai B'rith, founded in 1843, is the oldest civic organization of American Jews. It represents a membership of 300,000 men and women and their families. The Anti-Defamation League was organized in 1913, as a section of the parent organization, in order to cope with racial and religious prejudice in the United States. The program developed by the League is designed to achieve the following objectives: to eliminate and counteract defamation and discrimination against the various racial, religious and ethnic groups which comprise our American people; to counteract un-American and anti-democratic activity; to advance goodwill and mutual understanding among American groups; and to encourage and translate into greater effectiveness the ideals of American democracy.

National Citizens' Council on Civil Rights

The National Citizens' Council on Civil Rights is a voluntary association of prominent Americans organized in 1948 for the following express purposes:

1. To promote public understanding and support of the findings and recommendations contained in the Report of the President's Committee on Civil Rights which includes the recommendation that segregation be eliminated from American life.
2. To encourage local community action for improvement in the observance of civil rights for all citizens; to stimulate the formation of local councils on civil rights and the undertaking of local community audits.
3. To improve public understanding of the need for permanent Commissions on Civil Rights.

The membership of the Council represents the widest possible cross-section of American democratic opinion. It believes that our traditional American heritage points the way to a future greater realization of civil rights. And it believes these rights can best be won in our own backyard.